

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Applications for Consent to the)	MB Docket No. 02-70
Transfer of Control of Licenses)	
Comcast Corporation and AT&T Corp.,)	
Transferors,)	
To)	
AT&T Comcast Corporation, Transferee)	

**Comments of
Communications Workers of America**

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Summary

The merged AT&T Comcast will be the largest multi-channel video programming distribution (MVPD) company in the nation, serving more than 27 million cable customers. It will serve more than 54 percent of all cable television customers in the nation and 37.5 percent of the MVPD market. The merged AT&T Comcast will be twice the size of its next two largest competitors, with all other MVPD providers trailing far behind with single digit market share.

AT&T and Comcast claim that the proposed merger is in the public interest because it will result in more Americans receiving new broadband services faster. In this merger review, the purported public interest benefits must be verifiable, demonstrable, and merger-related. Based on the evidence provided to date to the Commission, the Applicants fail to meet this test. They must provide the Commission with specific deployment plans to demonstrate that post-merger AT&T Comcast will indeed accelerate deployment of broadband networks.

AT&T Broadband in recent years has accumulated a record of non-compliance with its commitments to local franchise authorities regarding system upgrades, build-out of Institutional networks, services to public, educational, and governmental (PEG) access channels, service performance, timely and complete payment of franchise fees, technical requirements, and other issues. AT&T Broadband also has a record of non-compliance with federal labor law. This record raises troubling questions regarding the purported public interest benefits that AT&T and Comcast claim will result from their proposed merger.

Further, the financial structure of the AT&T Comcast merger transaction raises additional

questions as to the ability of the merged entity to deliver on these promises. The new AT&T will be more highly leveraged than either the pre-merger AT&T Corp. or pre-merger Comcast. AT&T Comcast promise \$4 billion in synergies, reduced capital expenditures, and margin improvements after the merger. The Commission must carefully examine whether there are inconsistencies in these commitments--to deliver accelerated deployment of new broadband services *and* reduce operating and capital expenditures by \$4 billion annually—or whether the only way to resolve the inconsistencies will result in rate increases, service cutbacks, employment cuts, and delays in roll-out of new networks and services.

CWA is also concerned that the plans of the merged AT&T Comcast to consolidate customer service and repair call centers will result in poor customer service. Therefore, CWA recommends that the Commission condition merger approval, among any other conditions it may elect to impose, upon service quality reporting requirements.

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I. Introduction

The Communications Workers of America (CWA) is a labor organization, with more than 700,000 members employed in wireline and wireless telephony, cable, broadcasting, publishing, airlines, higher education, manufacturing, health care, state and local government, and other public and private sector organizations. CWA represents more than 3,000 employees at AT&T Broadband and more than 250 employees at Comcast. As workers and as consumers, CWA members have an interest in the proposed merger between AT&T and Comcast.

The merged AT&T Comcast will be the largest multi-channel video programming distribution (MVPD) company in the nation, serving more than 27 million cable customers. AT&T Comcast will serve 54 percent of all cable television customers in the nation and 37.5 percent of the MVPD market. (These figures follow Commission rules and count AT&T's 25 percent attributable interest in Time Warner Entertainment, TWE).¹ The new AT&T Comcast will be twice the size of its next two largest competitors (AOL Time Warner and DirecTV). All other MVPD providers trail far behind with single digit market share.²

¹ If AT&T Broadband divests or insulates its 25 percent attributable interest in Time Warner Entertainment (TWE), as it says it will do prior to merger closing, the new AT&T Comcast will have 37.5 percent of all cable television customers in the nation and approximately 30 percent of the MVPD market. In the Matter of Applications for Consent to the Transfer of Control of Licenses Comcast Corporation and AT&T Corp., Transferors, To AT&T Comcast Corporation, Transferee, Applications and Public Interest Statement ("Public Interest Statement"), MB Docket No. 02-70, Feb. 28, 2002, 49-50 and Appendices 6 and 7 (for MVPD customers); AT&T Corporation and Comcast Corporation, SEC form 10-Q for period ending June 30, 2001 (for number of cable subscribers for each company as of 6/30/01) and Federal Communications Commission, In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming Eighth Annual Report ("Eighth Cable Report"), CS Docket No. 01-129, Jan. 14, 2002 (rel), Appendix B-1, 87 (for total number of cable subscribers as of 6/30/01.) For AT&T's stated intention to divest TWE before the closing of the merger, *see* Public Interest Statement, 53-64. For TWE cable subscribers, *see* AOL Time Warner SEC form 10-Q for the period ending June 30, 2001.

² Eighth Cable Report, Appendix B-1, 87.

Numerous consumer organizations, MVPD competitors, equipment manufacturers, Internet Service Providers (ISPs), and policymakers have raised concerns about the anti-competitive impact of the proposed merger in a number of markets. These include the video and broadband distribution markets, the video and broadband programming markets, the bundled video/Internet access (broadband) market, and the equipment market for set-top boxes.³ The Commission must weigh the potential public interest harms that would result in these markets against the potential public interest benefits that the Applicants claim will result from this merger. The Commission has noted in prior merger reviews that as the harms to the public interest become greater, the degree and certainty of the public interest benefits must also increase.⁴ The proposed benefits should be demonstrable, verifiable, and merger-related.

Application of this test to the Applicants' public interest claims in this instant transaction is all the more important because AT&T has been less than straightforward in the past with this Commission regarding merger-related public interest benefits. Just two years ago, in the AT&T/MediaOne merger review, AT&T told this Commission that one of the benefits of its merger with MediaOne would be its ability to provide MediaOne access to AT&T's long distance network, allowing the merged AT&T/MediaOne the ability to offer a bundled package

³ Statement of the Consumer Federation of America, Consumers Union, Center for Digital Democracy on the AT&T Comcast Merger submitted to the Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, April 23, 2002 (available at http://www.consumerfed.org/CFA_et_al_ATT-Comcast_testimony.pdf) and Comments of Gary Betty of Earthlink, Mark Haverkate of Wide Open West, Robert Perry of Mitsubishi at the Hearing of the Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, "Dominance on the Ground: Cable Competition and the AT&T-Comcast Merger," April 23, 2002. (available at <http://judiciary.senate.gov/hearing.cfm?id=187>).

⁴ In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, To AT&T Corp. Transferee, *Memorandum Opinion and Order*, ("AT&T/MediaOne Order"), CS Docket No. 99-251, June 6, 2000 (rel) 154 quoting from SBC/Ameritech Order, 256.

of local and long distance services over its own network, thereby facilitating telephone competition in the local exchange.⁵ Yet just four months after this Commission approved the AT&T/MediaOne merger, AT&T abandoned its bundling strategy and announced its break-up plans.⁶

In this instant transaction, AT&T and Comcast state that the merger will accelerate deployment of cable telephony in Comcast's service areas.⁷ Even if one accepts that this is a *merger-related* benefit, the Commission must go one step further and require that the Applicants provide demonstrable and verifiable evidence of post-merger cable telephony and other infrastructure deployment plans.

AT&T Broadband in recent years has accumulated a record of non-compliance with commitments to local franchise authorities regarding infrastructure deployment, build-out of Institutional networks, services to public, educational, and governmental (PEG) access channels, service performance, timely payment of franchise fees, technical requirements, and other issues. While we recognize that resolution of these issues is the responsibility of local franchise authorities and not this Commission, we believe that this record raises further questions as to AT&T Broadband's credibility regarding its statements to this Commission regarding the public

⁵ AT&T/MediaOne Order, 167 citing Letter from Lorrie M. Marcil, Esq. Sidley & Austin, to Magalie Roman Salas, Secretary, FCC, dated Feb. 22, 2000, Transmittal of Letter from Stephen C. Garabito, General Attorney AT&T, and Susan Eid, Vice President, Federal Relations, MediaOne Group, Inc., to Deborah Lathen, Chief, FCC Cable Services Bureau, dated Feb. 22, 2000.

⁶ "AT&T To Create Family Of Four New Companies; Company To Offer To Exchange AT&T Common Stock For AT&T Wireless Stock," AT&T News Release, Oct. 25, 2000 (available at <http://www.attinsider.com/opinion/bundling/index.asp>). See also Communications Workers of America, "Bungling on Bundling at AT&T" (available at <http://www.attinsider.com/opinion/bundling/index.asp>). http://www.attinsider.com/bungling_bundling.asp).

interest benefits of this instant transaction. Therefore, in these comments we provide the Commission with information regarding AT&T Broadband's non-compliance with franchise, transfer, and settlement agreements with local cable franchise authorities. As more information enters the public record in local franchise transfer proceedings, we will provide updated information to this Commission.

Although AT&T and Comcast claim that the proposed merger will accelerate deployment of new and advanced services, the financial structure of this transaction raises many troubling questions as to the ability of the merged entity to deliver on these promises. The new AT&T Comcast will be more highly leveraged than either the pre-merger AT&T Corp. or pre-merger Comcast. The merged AT&T Comcast will not have access to internal capital resources from AT&T's long distance business, as AT&T does today, and therefore will be more dependent on external funding, raising the cost of capital. Thus, the financial structure of the merged AT&T Comcast may make it difficult for AT&T Comcast to deliver on its claims that post-merger it will accelerate deployment of advanced digital services. Further, the Commission must carefully examine whether the approximately \$4 billion in annual economic benefits that AT&T and Comcast calculate they will achieve from the merger can be achieved absent either significant rates increases, delayed infrastructure investment, reduced service, employment cuts, or a combination of all four.⁸

II. Legal Framework

⁷ Public Interest Statement, 37-42.

⁸ See *infra* SECTION for a more detailed discussion.

Under Sections 214(a) and 310(d) of the Communications Act, the Commission weighs the potential public interest harms of the proposed merger against the potential public interest benefits to insure that, on balance, the transfer serves the public interest, convenience, and necessity.⁹ The Commission's public interest analysis is not limited to a traditional anti-trust review, but also includes the "broad aims of the Communications Act," including opening all communications markets to competition; the preservation and advancement of universal service; and the acceleration of private sector deployment of advanced services. It may also entail assessing whether the merger will affect the quality and diversity of communications services.¹⁰ The Applicants bear the burden of proving the transfer will advance the public interest.¹¹

In its public interest review, the Commission employs a balancing test to determine whether the public interest benefits outweigh the potential public interest harms. As the Commission noted in the AT&T/MediaOne Order and SBC-Ameritech Order, "as the harms to the public interest become greater and more certain, the degree and certainty of the public interest benefits must also increase commensurately in order for us to find that the transaction on balance serves the public interest."¹² The analysis focuses on *demonstrable and verifiable* public interest benefits that could not be achieved if there were no merger (emphasis added).¹³

⁹ AT&T/MediaOne Order, 8. *See also* WorldCom-MCI Order, 13 FCC Rcd at 18030, 8 (1998); Bell Atlantic-NYNEX Order, 12 FCC Rcd at 20000, 29 (1997).

¹⁰ *Id.*, AT&T/MediaOne Order, 11. *See also* SBC-Ameritech Order, 14 FCC Rcd at 14739, 50. WorldCom-MCI Order, 13 FCC Rcd at 18030-31 at 9.

¹¹ SBC-Ameritech Order, 14 FCC Rcd at 14737, 48 (1999); AT&T-TCI Order, 14 FCC Rcd 3169-70, 15 (1999); WorldCom-MCI Order, 13 FCC Rcd at 18031, 10 n.33.

¹² AT&T-MediaOne Order, 154 quoting from SBC-Ameritech Order, 14 FCC Rcd at 14825, 256. *See also* Bell Atlantic-NYNEX Order, 12 FCC Rcd at 20063, 157.

¹³ *Id.*

In this instant transaction, the Applicants must provide to the Commission *demonstrable and verifiable* evidence of the purported public interest benefits of the merger, including detailed deployment plans. The Applicants must demonstrate these benefits could not be achieved absent this merger. Absent such evidence, the Applicants' fail to meet the burden of proof standard that the proposed merger will result in public interest benefits.

III. AT&T Has a Record of Exaggerated Promises and Non-Compliance

In the Public Interest Statement, AT&T and Comcast claim that the proposed merger will “accelerate facilities-based competition in the provision of broadband services, including but not limited to digital video, high-speed Internet service, and local telephony.”¹⁴ AT&T and Comcast claim that the scale and scope economies, cross-fertilization of complementary expertise and assets, and stronger balance sheet of the merged entity will make this possible.¹⁵

As a first matter, AT&T and Comcast fail to demonstrate that these benefits are *merger-related* benefits. Specifically, the Applicants fail to demonstrate that Comcast's entry into cable telephony could not happen independent of the merger. As a second matter, AT&T and Comcast ask the Commission to accept on faith that the merged AT&T Comcast will remain in the cable telephony market and that it will deploy advanced broadband networks and services faster than the two companies would have done without the merger. The Commission should require the Applicants to provide detailed post-merger deployment plans in order to verify these claims.

¹⁴ Public Interest Statement, 2.

¹⁵ *Id.*, 28-29.

A. AT&T Abandons Bundling Just Months After It Claimed in the AT&T/MediaOne Merger Review that Bundling Was a Merger-Related Public Interest Benefit

AT&T has made exaggerated claims to this Commission before in the context of merger reviews. In the AT&T/MediaOne merger review, AT&T wrote to Commission staff on Feb. 22, 2000, that, among other benefits of that merger, would be the access it would give MediaOne to AT&T's long distance network, enabling the merged company to offer a bundled package of local and long distance services in MediaOne's areas and, thus, allowing it to compete more vigorously against the ILECs in the provision of telephony services.¹⁶ In the AT&T/MediaOne Merger Order, the Commission cited this as one of the public interest benefits of that merger.¹⁷

On June 5, 2000, the Commission approved the AT&T/MediaOne merger, with conditions.¹⁸ Just four months later, on October 25, 2000, AT&T announced its plan to abandon its bundling strategy and to sell its broadband business.¹⁹ This instant transaction in which AT&T is selling its broadband business to Comcast is the direct result of that decision to abandon bundling and marketing of local and long distance telephony provided over AT&T's own networks. Given this past history, in this instant transaction the Commission must ensure that AT&T is not making

¹⁶ AT&T/MediaOne Order, 166 citing Letter from Lorrie M. Marcil, Esq. Sidley & Austin, to Magalie Roman Salas, Secretary, FCC, dated Feb. 22, 2000, Transmittal of Letter from Stephen C. Garabito, General Attorney AT&T, and Susan Eid, Vice President, Federal Relations, MediaOne Group, Inc., to Deborah Lathen, Chief, FCC Cable Services Bureau, dated Feb. 22, 2000.

¹⁷ *Id.*, 166.

¹⁸ AT&T/MediaOne Merger Order.

¹⁹ "AT&T To Create Family Of Four New Companies; Company To Offer To Exchange AT&T Common Stock For AT&T Wireless Stock," AT&T News Release, Oct. 25, 2000 (available at <http://www.attinsider.com/opinion/bundling/index.asp>). See also Communications Workers of America, "Bungling on Bundling at AT&T" (available at <http://www.attinsider.com/opinion/bundling/index.asp>). http://www.attinsider.com/bungling_bundling.asp).

similar false promises to the Commission, only to shift business strategies after merger approval. Therefore, the Commission must insist that AT&T and Comcast provide it with detailed, specific post-merger investment and infrastructure deployment plans.

B. AT&T Broadband Has a Record of Non-Compliance with Local Franchise Authorities

In the few short years that AT&T Broadband has been in the cable business, it has accumulated a disturbing record of non-compliance with contractual obligations to local franchise authorities. While we recognize that resolution of these issues is the responsibility of local franchise authorities and not this Commission, we believe that this record raises further questions as to AT&T Broadband's credibility regarding its statements to this Commission regarding the public interest benefits of this instant transaction. Therefore, in these comments we provide the Commission with information regarding AT&T Broadband's current status of non-compliance with a number of franchise, transfer, and settlement agreements with local cable franchise authorities. This compendium is not complete. As more information is entered into the public record over the next few months in public hearings convened by local franchise authorities on the AT&T Comcast transfer, we will provide updated information to the Commission.

Oakland, California

AT&T Broadband has been the cable provider in Oakland, Ca. since Feb. 16, 1999 when the Oakland City Council approved the transfer of control from TCI to AT&T. As part of the transfer, AT&T signed a Settlement Agreement with the city in which it committed, among other provisions, to rebuild the cable system in the city by March 1, 2001; to guarantee cable service to any requesting resident within a time specified in the agreement; to provide a pilot cable Internet

access program to city libraries; and to provide 20 percent discounts to low-income seniors and people with disabilities.²⁰

In public hearings on the AT&T/Comcast transfer held by the Oakland City Council on April 9, 2002—thirteen months after the rebuild completion deadline—the Oakland City Clerk reported that AT&T Broadband had completed only about 10 percent of the rebuild.²¹ At a March 26, 2002 hearing before the Finance Committee of the Oakland City Council, an AT&T spokesman stated that completion of the rebuild was five years away. (The AT&T spokesman also stated at the hearing that the rebuild completion rate in Oakland is “about even” with that in San Francisco, Ca. and “ahead” of the rebuild completion rate in San Jose, Ca.)²²

CWA represents the cable workers in Oakland. AT&T Broadband stopped construction work in Oakland in October 2000 and moved workers to other cities. The rebuild did not begin again until October 2001, seven months after the completion deadline had passed.

AT&T Broadband may also be in violation of the provision of the Settlement Agreement that requires discounts to senior citizens and people with disabilities. According to the Oakland city clerk, as reported to the Finance Committee of the Oakland City Council in its March 21, 2002 public hearing on the AT&T/Comcast transfer, in its migration from analog to digital cable

²⁰ Settlement Agreement between the City of Oakland and TCI Cablevision of California, Telecommunications, Inc., and AT&T Corp. dated Feb. 16, 1999.

²¹ Oakland City Council meeting, April 9, 2002.

²² Oakland City Council meeting, March 26, 2001.

service, AT&T Broadband moved several premium channels to the more expensive digital service. AT&T Broadband does not provide a discount for the digital service.²³

AT&T Broadband is in violation of the universal service provisions of the Settlement Agreement. There are scattered pockets of East Oakland that have been without cable access for years.²⁴

As more information regarding AT&T Broadband's non-compliance with terms of its franchise and settlement agreements with the city of Oakland become public record, CWA will share this information with this Commission.

Santa Rosa, Rohnert Park, Calistoga, Sonoma County, California

On March 25, 2002, after many months of unsuccessful negotiations to resolve problems, the three California cities of Santa Rosa, Rohnert Park, Calistoga, and the County of Sonoma filed suit in the Superior Court of California against AT&T Broadband for numerous violations of its franchise agreements with these cities, including:

- Failure to meet customer service call-answer standards. According to the complaint, customers reported being placed on hold for thirty minutes and up to an hour or more and 200,000 customers hung up without getting through in the third quarter according to the defendants' own internal records;
- Failure to meet customer service standard for installation and service, which requires maintaining a four-hour window for installation and service appointments;
- Failure to resolve customer complaints in a timely fashion;

²³ Report from City Clerk Regarding AT&T Request for Transfer of Control of Cable Franchise from AT&T to AT&T Comcast to Finance Committee of Oakland, Ca. City Council, March 26, 2002. AT&T Broadband's practice of moving premium channels such as HBO from the basic tier to the more expensive digital service is occurring in jurisdictions around the country. This amounts to a de facto price increase by requiring basic tier customers to subscribe to the more expensive digital service to get channels they used to get as part of the basic tier service.

²⁴ City Attorney John Russo quoted in Jahna Berry, "Crossed Wires: Oakland among several cities taking legal action against AT&T over its services," *The Recorder*, April 12, 2002.

- Failure to upgrade the cable systems as represented to the City Councils and subscribers and as required under the franchise agreements, ordinances, and/or transfer agreements;
- Billing customers for services they did not receive;
- Failure to provide service drops as required by the franchise agreement and ordinances;
- Failure to maintain the integrity and quality of the cable system causing signal interruption;
- Failure to maintain a local office as required under Franchise Agreements;
- Failure to comply with insurance, security deposit and/or letter of credit requirements;
- Broadcasting infomercials on PEG channels without franchisee permission;
- Discontinuing premium channel services to basic tier customers²⁵

Beaverton and Portland, Oregon

CWA represents AT&T Broadband workers in Beaverton, Or., a suburb of Portland. In Beaverton, Or., AT&T Broadband failed to meet the February 2002 deadline to complete the system upgrade. AT&T Broadband laid-off employees responsible for oversight of construction in Feb. 2001, which stopped the rebuild until these construction supervisors were re-hired several months later.

Over the past two years, AT&T Broadband has paid more than \$500,000 in fines to the three Portland area cable commissions for failure to meet call-answer service standards. The fines were levied after AT&T closed local call centers, outsourcing the work to distant call centers in Texas and Ohio. The Metropolitan Commission fined AT&T Broadband \$242,000; the Vancouver, Wash, Clark Co, City/County Cable Commission fined AT&T \$65,000; and the Mt.

²⁵ City of Santa Rosa; County of Sonoma; City of Rohnert Park; City of Calistoga v Westmarc Development Joint Venture; AT&T Corp., a New York Corporation; TCI of East San Fernando Valley, L.P., Superior Court of the State of California, County of Sonoma, Case No. 229584, filed March 25, 2002. See also Spencer, soper, "AT&T accused of cheating county cable TV customers," *The Press Democrat*, Mar. 27, 2002.

Hood Cable Commission fined AT&T \$180,000. Finally, AT&T Broadband brought the sales work back in-house to improve customer service.²⁶

In Portland and surrounding Multnomah County, AT&T Broadband is out of compliance with its franchise commitments regarding construction of the Institutional Network. It has not yet met requirements to install, activate, and test new Headend equipment, nor is it providing the interfaces between the Institutional Network and the city of Portland's IRNE system. Nor is AT&T Broadband providing quality signals to the cable access channel.²⁷

Arlington, Texas

According to the April 3, 2002 letter from the Assistant City Attorney of Arlington, Texas to AT&T Broadband, the city has the following noncompliance and other problems with AT&T Broadband:

- Institutional Network. During the AT&T/TCI transfer discussion, AT&T assured the city that its upgrade of the I-NET would alleviate transmission problems. However, there has been no noticeable improvement to the I-NET. AT&T's response to request for service has been poor to nonexistent.
- AT&T is not in compliance with franchise agreement requirements which require I-NET connections to specifically listed City facilities
- AT&T is not in compliance with franchise agreement requirements which require AT&T to maintain a repair force to respond and repair I-Net service within four hours; AT&T's

²⁶ "Cable Workers Get 2nd Chance," *The Oregonian*, Jan. 5, 2002.

²⁷ Letter from David C. Olson, Director, Mt. Hood Cable Regulatory Commission to Ms. Deborah Luppold, Vice President, Franchising and Local Government Relations, AT&T, re Request for Info – AT&T/Comcast "Transfer of Control" Request, dated April 2, 2002 (available at <http://www.cable.ci.portland.or.us/RFI.ATT-ComcastFinal-pdf.pdf>).

response time is rarely within four hours but generally at a minimum takes several days if not weeks;

- AT&T is not in compliance with franchise agreement which requires replacement of coaxial cable electronics with bi-directional amplifiers;
- AT&T is not in compliance with requirements to file an audited annual report and detailed accounting schedules;
- AT&T is not in compliance with requirements to perform annual technical performance tests, and to report the results of these tests to the city;
- AT&T does not file reports on local origination of cable programming with the city, so that the city can monitor compliance with community programming requirements of the 1999 AT&T/TCI transfer agreement
- AT&T does not file quarterly reports with the city on service performance as required by the franchise agreement.

Further, the letter from the Arlington city attorney to AT&T notes, “the number of subscriber complaints continues to be a source of concern to the City.”²⁸

Seattle, Washington

In Seattle, Wa., AT&T Broadband is in violation of the franchise agreement that requires AT&T Broadband to maintain two customer service offices. (The franchise agreement requires one office for every 75,000 customers; AT&T Broadband in Seattle has over 150,000 customers.) In June 2001, AT&T Broadband closed one customer service office. After the city was unable to resolve this franchise violation, the city on Jan. 30, 2002 assessed AT&T Broadband approximately \$5,900 a month in liquidated damages for noncompliance.

²⁸ Letter from David L. Barber, Assistant City Attorney of Arlington, Tx. to Mr. Dick Kirby, Executive Director, AT&T Broadband, re: Request for Information Relative to Merger of AT&T Broadband and Comcast Corporation, dated April 3, 2002.

AT&T Broadband redacted all customer service performance data related to its Internet access service for the fourth quarter of 2001. The city cable office requires provision of this information as part of the customer service reporting to the city. The city's cable office received more than 500 calls from customers of the AT&T Broadband Internet access service who could not get through to the AT&T Broadband office during that period.²⁹

Lakeville, Ma.

In Lakeville, Ma., a small community southeast of Boston, the Board of Selectmen on March 27, 2002 fined AT&T Broadband \$25,000 for breaking its operating agreement with the city. According to the city, AT&T Broadband was out of compliance with customer service call-answer performance standards over the past two years. AT&T failed to provide the city with customer service data during compliance oversight hearings. According to press reports, other communities in southeastern Massachusetts have experienced similar problems with AT&T Broadband's customer service.³⁰

Cambridge, Ma.

Under terms of the Cambridge, Ma. franchise agreement, AT&T Broadband must provide a 10 percent senior citizen discount for basic tier cable service. However, AT&T Broadband has interpreted the franchise agreement to mean that the senior discounted service applies only to the cable service that includes re-transmission of broadcast and public, educational, and

²⁹ CWA telephone interview with Tony Perez, Director, Office of Cable Communications, City of Seattle on April 25, 2002.

³⁰ John Doherty, "Lakeville hits AT&T with maximum fine," *The New Bedford Standard-Times*, Mar. 27, 2002; John Doherty, "AT&T hearing set to conclude tonight," *New Bedford Standard-Times*, Mar. 26, 2002, A12; Robert

governmental channels (PEG), not to basic tier cable service. The city of Cambridge filed a complaint in Superior Court against AT&T Broadband over this. The case is pending.

These examples illustrate a pattern of non-compliance by AT&T Broadband with agreements it has made with local franchise authorities. Given this record, this Commission must require the Applicants to provide demonstrable and verifiable evidence to support the public interest claim that the merger will result in faster deployment of advanced broadband services to more Americans.

Preer, "Cable turnoff: Frustrated communities take TV into own hands," *Boston Globe*, Mar. 29, 2002.

C. AT&T Broadband's Record of Non-Compliance with Labor Laws Casts Further Doubt on the Credibility of its Commitments in This Proceeding

AT&T Broadband also has a record of non-compliance with labor laws.

CWA represents cable workers in Salt Lake City, Provo, and Ogden Utah. The National Labor Relations Board (NLRB), Twenty-Seventh Region, issued a complaint against AT&T Broadband for violation of the National Labor Relations Act (NLRA). The complaint states that in Salt Lake City, Provo, and Ogden, Utah, AT&T Broadband since Oct. 17, 2001 “discriminated against its employees by withholding market adjustment increases from the employees, and since that date continues to fail and refuse to grant these increases.”³¹ The complaint also states that AT&T Broadband since Oct. 17, 2001 has failed to bargain collectively with CWA, failed to continue in effect terms and conditions of employment by unilaterally withholding promised wage increases, and by so doing, has discouraged membership in a labor organization. According to the NLRB complaint, these charges are unfair labor practices within the meaning of the National Labor Relations Act.³²

CWA represents AT&T Broadband workers in Elyria, Oh. The National Labor Relations Board, Region 8 issued a complaint against AT&T Broadband on April 18, 2002 for violation of the National Labor Relations Act. The complaint alleges that AT&T Broadband illegally dismissed

³¹ United States of America before the National Labor Relations Board, Twenty-seventh Region, AT&T Broadband and Communications Workers of America, AFL-CIO, District 7, Complaint and Notice of Hearing, Case 27-CA-17732-1, Jan. 31, 2002.

³² *Id.*

an employee because she engaged in “concerted activities” of union organizing, thereby “discouraging membership in a labor organization” in violation of the NLRA.³³

CWA has multiple cases of unfair labor practices pending against AT&T Broadband in three additional locations (Dallas, Tx., Hialeah, Fl., and Atlanta, Ga.) before the National Labor Relations Board at this time.

IV. AT&T Comcast Financial Structure Raises Questions as to Whether AT&T Comcast Will Be Able to Deliver Accelerated Deployment of Broadband Services

The financial structure of the AT&T Comcast transaction also raises questions as to whether the merged AT&T Comcast will be able to deliver on its claims of post-merger accelerated deployment of broadband services. Contrary to the claims of the Applicants, the merged AT&T Comcast will be more highly leveraged than pre-merger AT&T Corp. and pre-merger Comcast. This may limit investment. Further, AT&T and Comcast project \$4 billion in merger-related economic benefits from lower operating margins, operating synergies, and reductions in capital expenditures. Will the merged AT&T Comcast be able to meet these financial targets *and* accelerate deployment of new broadband services without raising rates or cutting back on customer service and employment? The apparent inconsistencies between these claims makes it all the more important for this Commission to require that AT&T and Comcast provide verifiable and demonstrable evidence of their post-merger investment and deployment plans.

³³ United States before the National Labor Relations Board, Region 8, MediaOne of Ohio, Inc., d/b/a/ AT&T Broadband and Communications Workers of America, AFL-CIO, Complaint and Notice of Hearing, Local 4340, Case No. 8-CA-33038, April 18, 2002.

A. The Merged AT&T Comcast Will Be More Highly Leveraged Than Pre-Merger AT&T Or Comcast

The Applicants claim that the merger will enhance significantly AT&T Broadband's "access to capital required to underwrite an aggressive plan for deploying new broadband services."³⁴ The Applicants state that the merged entity will have a first year combined debt to operating cash flow ratio of less than 5 to 1, representing a substantial improvement over AT&T Broadband's ratio of debt to 2001 operating cash flow of over 8 to 1.³⁵

The Applicants' debt analysis is incomplete and therefore flawed. Pre-merger, AT&T Broadband operates as one business unit within the larger AT&T Corp. As such, AT&T Broadband has been able to finance a portion of its capital expenditures from internal cash generated by other lines of business of AT&T Corp.³⁶ After this instant transaction is completed, this internal source of cash will no longer be available.

As of Dec. 31, 2001, the debt coverage ratio of AT&T Group (which includes AT&T Broadband, AT&T Consumer, and AT&T Business) was 6.8 to 1. At the same date, Comcast's debt coverage ratio was 3.4 to 1. After the merger, the debt coverage ratio will be 2.6 to 1. (The debt coverage ratio is calculated as Earnings Before Interest, Taxes, Depreciation, and

³⁴ Public Interest Statement, 30.

³⁵ *Id.*, 30.

³⁶ In 2001, AT&T Broadband generated \$2.196 billion in cash (EBITDA) and spent \$3.621 billion on capital expenditures. That same year, AT&T consumer generated \$4.929 billion in cash (EBITDA) and spent only \$37 million on capital expenditures; AT&T business generated \$8.447 billion in cash and spent \$4.847 billion on capital expenditure. AT&T Earnings Commentary, Quarterly Update – First Quarter 2002, April 24, 2002.

Amortization (EBITDA) over debt service.) In other words, the merged AT&T Comcast will be more highly leveraged, with less internal capacity to generate earnings to cover its debt.³⁷

As a result, as the Applicants themselves acknowledge in their merger proxy, the merged AT&T Comcast will have less internal capacity to generate cash. Given the merged AT&T Comcast's level of debt, the cost of capital is likely to increase. The Applicants themselves acknowledge in the merger proxy that this may cause delay in deployment plans.

AT&T Comcast may not be able to obtain or obtain on favorable terms the capital necessary to fund the substantial capital expenditures...that are required by its strategy and business plan. *A failure to obtain necessary capital or to obtain necessary capital on favorable terms could have a material adverse effect on AT&T Comcast and result in the delay, change or abandonment of AT&T Comcast's development or expansion plans* (emphasis added)³⁸

The debt rating company Moody's recognizes that the merged AT&T Comcast will have higher capital costs. It downgraded AT&T Broadband's debt rating on Dec. 20, 2001, the day that AT&T and Comcast provided investors with a financial overview of the transaction.³⁹

B. Promised Economic Benefits May Lead to Pricing Pressures or Cutbacks in Customer Service

³⁷ AT&T Corp. 2001 EBITDA of \$15.7 billion divided by \$2.3 billion debt service = 6.8 debt coverage ratio. Comcast 2001 EBITDA of \$2.7 billion divided by \$0.8 billion debt service = 3.4 debt coverage ratio. AT&T Comcast will have net debt of \$28.8 billion (AT&T is transferring \$17.0 billion in debt plus Comcast's \$2.7 billion debt). AT&T Comcast pro-forma EBITDA of \$4.9 billion divided by \$1.9 billion debt service = 2.6 coverage ratio. CWA calculations based on AT&T Earnings Commentary, Quarterly Update – First Quarter 2002, April 24, 2002 and "Comcast Reports Record Revenue of \$9.7 and Operating Cash Flow of \$2.7 Billion For 2001," Feb. 6, 2002.

³⁸ AT&T and Comcast Preliminary Merger Proxy Statement, Risk Factors, Feb. 11, 2002, I-30.

³⁹ "Moody's Lowers Long Term Ratings of AT&T Broadband and Subsidiaries (Senior Unsecured to Baa2 from Baa1), Dec. 20, 2001. AT&T Comcast Investor Presentation, Dec. 20, 2001.

AT&T and Comcast have told this Commission and investors that they anticipate the merger should result in synergies, efficiencies, reduced capital expenditures, and operating margin improvements totaling \$4 billion a year. The \$4 billion is the sum of three different calculations. First, AT&T and Comcast estimate approximately \$1.25 to \$1.95 billion a year in increased Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) synergies and efficiencies five years after the merger.⁴⁰ Second, AT&T and Comcast expect to reduce capital expenditures by an additional \$200–300 million annually.⁴¹ Third, the merging parties project an additional \$1.6 billion in EBITDA margin improvement (based on third quarter 2001 data), over and above the aforementioned synergies and capital expenditure reductions.⁴² AT&T and Comcast state that they will be able to boost AT&T Broadband’s much lower operating margin to that of Comcast’s. CWA has re-calculated the projected margin improvement at \$1.7 billion, using end of year 2001 data. This calculation is based on boosting AT&T Broadband’s 2001 operating margin of 22.4 percent to Comcast’s 2001 operating margin of 39.9 percent.⁴³ AT&T and Comcast have not explained in public documents how they will achieve the projected “margin improvements.” According to AT&T and Comcast, these margin improvements are “in

⁴⁰ AT&T and Comcast calculate these \$1.25 to \$1.95 billion in synergy savings as follows: Programming cost savings \$250-450 million; Operating efficiencies \$200-300 million; National advertising platform \$100-200 million; New products \$100-200 million; Comcast telephony \$600-800 million. Public Interest Statement, 31-35 and Declaration of Robert Pick (“Pick Declaration”), 3-13. See also AT&T Comcast Investor Presentation, Dec. 20, 2001 (available at <http://asp01sea.activate.net/ccbn/t/011220/index.htm>).

⁴¹ “These benefits are not included in the estimated \$1.25 to \$1.95 in EBITDA.” Public Interest Statement, 32-22, fn.55.

⁴² AT&T Comcast Investor Presentation, 29-30. This information inexplicably is not included in the Public Interest Statement or Pick Declaration provided to this Commission.

⁴³ Based on 2001 figures, AT&T Broadband had a 22.4 percent operating margin (\$2.196 EBITDA divided by \$9.799 billion revenue). Comcast had a 39.9% operating margin (\$2.112 billion EBITDA divided by \$5.289 billion revenue). The difference 17.5 percent (39.9 minus 22.4) times \$9.799 billion AT&T 2001 revenue = \$1.7 billion. CWA calculations based on AT&T Earnings Commentary, Quarterly Update – First Quarter 2002, April 24, 2002 and “Comcast Reports Record Revenue of \$9.7 and Operating Cash Flow of \$2.7 Billion For 2001,” Feb. 6, 2002.

addition to synergies”⁴⁴ which have already been identified as reduced programming costs, operating efficiencies, national advertising, new products, rollout of Comcast cable telephony, and reduced capital expenditures. Where then will these improved margins come from? The Commission must verify the source of these “margin improvements” to ensure that they will not come from actions that would not serve the public interest, such as rate hikes, service cuts, or delays in deployment of broadband networks and services.

V. Service Quality Issues

The Commission’s public interest analysis may include an assessment of whether the merger will affect the quality of telecommunications services.⁴⁵ AT&T Comcast have told this Commission that after the merger, AT&T Comcast will consolidate customer care and provisioning, maintenance, and repair centers.⁴⁶ Similarly, after the AT&T purchase of TCI and merger with MediaOne, AT&T consolidated more than 200 call centers into 30.⁴⁷ In the fall of 2002, AT&T outsourced many of the cable telephony customer service and repair functions formerly performed by AT&T union-represented career customer service professionals to an outside vendor with a low-wage, high-turnover human resource model.

The consolidation and outsourcing of customer care and repair/maintenance call centers resulted in a serious decline in quality of service.⁴⁸ Employees in regional call centers are unfamiliar with

⁴⁴ *Id.*, 29.

⁴⁵ WorldCom/MCI Order, 9.

⁴⁶ “...the scale economies created by the merger will foster more efficient use of infrastructure (e.g. by allowing for more efficient use of call centers), and provisioning, repair and maintenance (e.g., by providing local/regional scale to support efficient, centralized truck rolls.) Public Interest Statement, 33. *See also* Testimony of C. Michael Armstrong to Senate Subcommittee on Antitrust, Competition, and Business and Consumer Rights, April 23, 2002. (available at <http://judiciary.senate.gov/hearing.cfm?id=187>).

⁴⁷ AT&T Broadband, “What Have We Done to Achieve the Vision.”

⁴⁸ “Cable Workers Get 2nd Chance,” *The Oregonian*, Jan. 5, 2002.

the local cable territory, and therefore do not schedule truck rolls nor provide answers to service questions with the same efficiency and accuracy that employees who live and work in the local franchise area are able to provide. Further, consolidation and outsourcing make it more difficult for local franchise authorities to monitor and enforce cable companies' compliance with customer service performance standards. An exception in the federal customer service rules permits cable operators to be relieved of having to meet response standards if there are "service conditions...not within the control of the cable operator."⁴⁹ Thus, the cable operator will claim that bad weather anywhere in a cable operator's expanded region exempts the operator from meeting service standards throughout its entire region.

At least one jurisdiction—Beaverton, Or.—insisted that AT&T Broadband re-open its local call center to alleviate customer service problems related to consolidation and outsourcing.⁵⁰

With each cable merger, local jurisdictions find it increasingly difficult, costly, and time consuming to hold large, national, well-financed cable operators to customer service standards. As the examples we have cited in Section IIIA. *supra* illustrate, even large jurisdictions, such as Arlington, Tx., Seattle, Wa., and Portland, Or. have difficulty getting accurate data and then enforcing compliance with customer service performance standards.⁵¹

Therefore, the Commission should require, as a merger condition, that the merged AT&T Comcast provide to the Commission quarterly service performance reports by local franchise

⁴⁹ 47 CFR §76.309.

⁵⁰ *Id.*

area, subject to financial penalty for non-compliance. The quarterly service performance reports should be publicly available on the Commission's web site. Such national reporting would facilitate enforcement by 1) providing local franchise authorities access to comparative data; and 2) providing consumers access to the information. It would also facilitate regulatory oversight to protect consumers against AT&T Comcast cross-subsidization of competitive broadband services by cutting back quality of service provided to customers of its less competitive cable service.⁵² Since many local authorities require such reporting, the administrative burden on the merging parties will be minimal. Further, it would add a measure of regulatory parity, since local telephone companies are required to provide such data to the Commission as part of the ARMIS reports. The Commission should also consider requiring AT&T Comcast to report, and make publicly available, price data by local franchise area.

⁵¹ See Section IIIA. *supra*.

⁵² The Commission requires service quality reporting by incumbent local exchange carriers to prevent cross-subsidization of competitive services by cutting back quality provision of local telephone service, among other reasons.

VI. Conclusion

The Applicants have not yet met the burden of proof to demonstrate that the merger is in the public interest. The past record of AT&T Broadband of non-compliance with commitments and agreements and the financial structure of the transaction raise troubling questions as to whether the Applicants will be able to deliver on their promise to provide new broadband services to more Americans faster.

Therefore, the Commission should require AT&T and Comcast to provide detailed infrastructure investment and deployment plans for review to verify the Applicants claims. Second, as a condition of merger, the Commission should require AT&T Comcast to provide to the Commission for public reporting quarterly service quality data by local franchise area.

Respectfully submitted,

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Assistant to the President and Director of Research

April 29, 2002

Appendix
News Articles